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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,926	03/31/2004	Andy Schwammburger	52318/TJD/M881	7919
57715	7590	02/23/2006	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			SHAFFER, RICHARD R	
P.O. BOX 7068			ART UNIT	
PASADENA, CA 91109-7068			PAPER NUMBER	

3733

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/814,926

Applicant(s)

SCHWAMMBERGER ET AL.

Examiner

Richard R. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Specification*

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The applicant is suggested to use a title that briefly describes the invention as a plate system, spatially positionable, and with the outrigger plate capable of being reshaped. An example of a title is: Dual Plate System Positioned and Sized to Act as a Cage.

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-25 and 27-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Hearn (US Patent Application Publication 2002/0143336).

Hearn discloses a system made of (Page 2, [0029]) bioresorbable materials or titanium comprising a main plate (12, 212); a spatially offset plate-shaped outrigger (14, 214) which can be flexed, bent (like all materials, even glass if heated), and cut; the outrigger has a plurality of holes (28, 228) to receive screws (42a, 242); the outrigger is a perforated (because of the "ring" holes 28, 228) as well as a grid-like (holes are lined up along a single axis) plate; [First Interpretation] the outrigger (14) has a ring-like fastening section (36); an elongate flexible (bendable) connection pin {Definition of pin:

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*A short, straight, stiff piece of wire* (37,39 located on 16); the main plate (12) has at least one hole (34, 38) that extends parallel to the plane defined by the main plate for accepting the flexible connection element; the connection pin hooks the main plate with the looped end (**Figure 4**) while passing through connection elements (37, 39); the main plate and outrigger can be symmetrically positioned along the longitudinal axis of the main plate if they are merely rotated 180 degrees; the outrigger and main plate while connected by the connection pin are firmly held and can be handled as a single unit; the outrigger has a base shape sufficiently large to for the closures of the sternum; **[Second Interpretation]** the flexible connection element (232) is in one piece with the outrigger (214) and are thus unreleasably connected; the outrigger and main plate can be incrementally offset spatially; the main plate and outrigger have hooks (276); **[Third Interpretation]** main plate (30) has a larger base area than outrigger (32) in **Figure 6**; **[Fourth Interpretation]** **Figure 12** shows at least 5 passages for receiving fastening elements in the outrigger (14).

In regard to claims 33 and 34, Hearn discloses (Page 4, [0044]) that any number and combination of attachment members, such as hooks and bone screws, and release members, such as pins, U-shaped pins, and cam-members is apparent.

Claims 1 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (US Patent 5,376,126).

Lin discloses a system comprising a main plate (10) having a larger thickness than outrigger (40) with connection element (62) connecting them.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday during (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard Shaffer  
February 15<sup>th</sup>, 2006



EDUARDO S. ROBERT  
SUPERVISORY PATENT EXAMINER